

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LAURIE PEABODY, et al.,	:	Case No. 2:10-cv-1078
	:	
Plaintiffs,	:	Judge Edmund A. Sargus
v.	:	
	:	
PERRY TOWNSHIP, OHIO, et al.,	:	<u>MOTION FOR ORDER TO DISMISS</u>
	:	<u>FOLLOWING SETTLEMENT</u>
Defendants.	:	
	:	

Pursuant to Fed R. Civ. Proc. 62.1, the parties jointly seek an order of this Court expressing its willingness to dismiss the lawsuit because the parties have reached a settlement. This order is required in order to secure an order of remand from the Sixth Circuit.

Specifically, the parties request that:

1. This court issue the attached order indicating its inclination to grant a motion to dismiss all claims against all defendants (draft attached);
2. The parties will then seek a remand from the Sixth Circuit based on that statement;
3. The order of remand will then issue from the Sixth Circuit restoring jurisdiction over Defendants and the related claims to this Court;
4. The parties will then file the motion to dismiss the claims according to the terms of the settlement agreement;
5. This Court will then have jurisdiction to grant the motion to dismiss the case with prejudice.

MEMORANDUM

Plaintiffs have settled their claims against Defendants. Plaintiffs cannot move to dismiss the case because the claims against the defendants are the subject of an appeal. The Sixth Circuit

routinely entertains requests for remand when the District Court indicates a willingness to alter an order or dismiss a claim that is the basis for an appeal. This Court may issue such an indicative ruling stating its willingness to grant Plaintiffs' intended motion pursuant to Federal Rule of Civil Procedure 62.1. Such a ruling permits the Sixth Circuit to "remand for further proceedings but [to retain] jurisdiction unless it expressly dismisses the appeal" pursuant to Federal Rule of Appellate Procedure 12.1. Accordingly, the parties respectfully request that this Court enter an order expressing its willingness grant a motion to dismiss the lawsuit pursuant to terms of the settlement negotiated by the parties.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2013 a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Alphonse A. Gerhardstein
Attorney for Plaintiff